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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**
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6 United States of America,

7 Plaintiff

8 v.

9 James Lescinsky,

10 Defendant
11

2:16-cr-00153-JAD-CWH

**Order Re: United States’
Motion in Limine**

[ECF No. 13]

12 Defendant James Lescinsky stands charged with deprivation of rights under color of law,
13 tampering with a witness, and falsification of a document, all arising out of incidents that allegedly
14 occurred while Lescinsky was a Clark County School District (CCSD) Police Officer. The United
15 States moves in limine to prevent the defendant from (1) referencing potential punishment, (2)
16 offering improper impeachment evidence, (3) referencing the government’s failure to call equally
17 available witnesses, and (4) introducing “irrelevant evidence” about unrelated misconduct by a
18 CCSD Internal Affairs Detective who participated in the investigation of the incidents that give rise
19 to this case.¹ Lescinsky does not oppose the request to exclude the first three categories of
20 evidence, but he argues that the detective’s misconduct is relevant and should not be excluded.² I
21 grant the motion as to potential punishment, impeachment evidence, and the government’s failure to
22 call equally available witnesses. But I deny the motion as to the detective without prejudice to the
23 government’s ability to raise these arguments at trial when I have a better understanding of the
24 nature of this evidence and its relevance in the context of trial.
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27 ¹ ECF No. 13.

28 ² ECF No. 16.

Discussion

The Federal Rules of Evidence do not explicitly authorize motions in limine, but under the district courts' trial-management authority, judges can rule on pretrial evidentiary motions.³ Limine rulings are provisional; they are "not binding on the trial judge [who] may always change [her] mind during the course of a trial."⁴ Denying a motion in limine does not guarantee that all evidence raised in the motion will be admissible at trial;⁵ it "merely means that without the context of trial, the court is unable to determine whether the evidence in question should be excluded."⁶

A. The unopposed requests are granted.

The government moves to preclude Lescinsky from referencing the punishment he potentially faces, offering improper impeachment evidence, and impugning the government's decision to not call certain witnesses.⁷ Because Lescinsky does not object to these requests, I grant the motion on each of these points.

B. The request related to the CCSD detective is denied.

The government also moves to preclude Lescinsky from introducing evidence that CCSD Internal Affairs Detective Christopher Klemp threatened witnesses and suppressed evidence in order to influence his investigations, including his investigation into Lescinsky. The allegations against Detective Klemp are too vague and unsubstantiated for me to determine the nature of this evidence and its relevance in this trial. Neither the government nor Lescinsky point to specific evidence or witnesses that Detective Klemp improperly influenced in this case. They merely argue about the

³ *Luce v. United States*, 469 U.S. 38, 40 n. 2 (1984).

⁴ *Ohler v. United States*, 529 U.S. 753, 758 n. 3 (2000); *accord Luce*, 469 U.S. at 41 (noting that in-limine rulings are always subject to change, especially if the evidence unfolds in an unanticipated manner).

⁵ *Tracey v. A. Family Mut. Ins. Co.*, No. 2:09-cv-1257-GMN-PAL, 2010 WL 3724896, at *2 (D. Nev. Sept. 17, 2010) (quoting *Ind. Ins. Co. v. Gen. Elec. Co.*, 326 F. Supp. 2d 844, 846 (N.D. Ohio 2004)).

⁶ *Id.* (citation and internal quotation marks omitted).

⁷ *See* ECF No. 13 at 3–5.

1 relevance or irrelevance of allegations made in a local newspaper article. As a result, there is no
2 evidence for me to exclude, and Detective Klemp's misconduct—and its relevance in this trial—is,
3 at this stage, purely speculative. For this reason, I deny the motion without prejudice to the
4 government's ability to raise objections to specific evidence at trial, when I can better assess the
5 FRE 401–403 ramifications of these issues.

6 **Conclusion**

7 Accordingly, IT IS HEREBY ORDERED that the United States' **motion in limine [ECF**
8 **No. 13] is granted in part and denied in part without prejudice to object at trial.** Lescinsky is
9 precluded from (1) referencing the potential punishment he faces, (2) introducing improper
10 impeachment evidence regarding arrests and school disciplinary records, and (3) referencing the
11 United States' decision to not subpoena certain witnesses. The United States' request to exclude
12 evidence related to Detective Klemp is denied without prejudice to the government's ability to
13 challenge this evidence at trial when the court can better evaluate its nature and relevance.

14 Dated this 14th day of July, 2016

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18 Jennifer A. Dorsey
19 United States District Judge
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